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No. 1100

In the Supreme Court of the United States

OCTOBER TERM, 1946

THE UNITED STATES OF AMERICA, APPELLANT

v.

LIONEL PALLETZ

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA

STATEMENT AS TO JURISDICTION

In the District Court of the United States for the Eastern District of Pennsylvania

No. 13841

UNITED STATES OF AMERICA

v.

LIONEL PALLETZ

STATEMENT AS TO JURISDICTION

In compliance with Rule 37 (a) (1) of the Federal Rules of Criminal Procedure and Rule 12 of the Supreme Court of the United States, as amended, the United States submits herewith its statement particularly disclosing the basis upon which the Supreme Court has jurisdiction on appeal to review the judgment of the District Court entered in this cause on December 27, 1946, dismissing the information.

JURISDICTION

The jurisdiction of the Supreme Court to review by direct appeal the judgment of the district court is conferred by the Act of March 2, 1907, 34 Stat. 1246, as amended by the Act of May 9, 1942, 56 Stat. 271, 18 U. S. C., Supp. V, 682, commonly known as the Criminal Appeals

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Act, and by Section 238 of the Judicial Code, 28 U. S. C. 345.

STATUTES INVOLVED

Section 13 of the Revised Statutes, as amended by the Act of March 22, 1944, c. 123, 58 Stat. 118, 1 U. S. C., Supp. V, 29, provides:

> The repeal of any statute shall not have the effect to release or extinguish any penalty, forfeiture, or liability incurred under such statute, unless the repealing Act shall so expressly provide, and such statute shall be treated as still remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of such penalty, forfeiture, or liability. The expiration of a temporary statute shall not have the effect to release or extinguish any penalty, forfeiture, or liability incurred under such statute, unless the temporary statute shall so expressly provide, and such statute shall be treated as still remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of such penalty, forfeiture, or liability.

Section 1 (b) of the Emergency Price Control Act of January 30, 1942, 56 Stat. 23, as amended, 50 U. S. C. App., Supp. V, 901 (b), provides:

> The provisions of this Act, and all regulations, orders, price schedules, and requirements thereunder, shall terminate on June 30, 1946, or upon the date of a proclamation

by the President, or upon the date specified in a concurrent resolution by the two Houses of the Congress, declaring that the further continuance of the authority granted by this Act is not necessary in the interest of the national defense and security, whichever date is the earlier; except that as to offenses committed, or rights or liabilities incurred, prior to such termination date, the provisions of this Act and such regulations, orders, price schedules, and requirements shall be treated as still remaining in force for the purpose of sustaining any proper suit, action, or prosecution with respect to any such right, liability or offense.

THE ISSUE AND THE RULING BELOW

The defendant was charged in an information in ten counts filed in the district court on August 29, 1946, with having willfully demanded and received, during the months from July 1944 through May 1945, rents for certain housing accommodations in excess of those allowed by the Emergency Price Control Act of 1942 and regulations promulgated thereunder by the Office of Price Administration.

The defendant moved to dismiss the information on the ground that the Emergency Price Control Act of 1942 and the regulations promulgated thereunder had expired on June 30, 1946, prior to the filing of the information. The district

court, in an order entered December 27, 1946, granted the motion to dismiss. As shown in an opinion rendered December 20, 1946, the court based its decision on the grounds that the general saving statute (R. S. § 13, as amended, *supra*, pp. 1–2) was inapplicable in view of the inclusion in the Emergency Price Control Act of 1942 of a special saving clause (*supra*, p. 2), that under the latter provision, authority to prosecute for offenses committed prior to June 30, 1946, was limited to cases in which prosecution was commenced prior to that date, and that since the information in the instant case was not filed until after that date, the prosecution was barred. The decision of the district court thus involves a construction of both the general saving statute and of the saving clause of the Emergency Price Control Act of 1942, and its ruling is subject to review by the Supreme Court on direct appeal. See, e. g., *United States* v. *Borden Co.*, 308 U. S. 188, 194–195.

THE QUESTION IS SUBSTANTIAL

The decision of the district court that the general saving statute is inapplicable to prosecutions under the Emergency Price Control Act of 1942, and that under the saving clause of the latter statute authority to prosecute for offenses committed prior to its expiration on June 30, 1946, is limited to cases in which prosecution was commenced prior to that date, is of manifest impor-

tance. Such a restrictive interpretation hampers effective enforcement of the rent control program and is contrary to the legislative policy as expressed in the Emergency Price Control Act of 1942 and the Price Control Extension Act of July 25, 1946, Public No. 548, c. 671, 79th Cong., 2d sess.

Resolution of the question whether the Government could, after June 30, 1946, initiate prosecutions for rent and price ceiling violations which occurred prior to that date depends upon the proper construction of the general saving statute and the saving clause included in the Emergency Price Control Act. The district court held that the clause in the general saving statute reading, "unless the temporary statute shall so expressly provide," removes the instant case from the operation of that statute because of the inclusion in the Emergency Price Control Act of a special saving clause. However, decisions of the Supreme Court make it clear that such a result follows only if the provisions of the Emergency Price Control Act expressly or by plain implication cut down the scope of the general rule established by the general saving statute. See, e. g., *Hertz* v. *Woodman,* 218 U. S. 205, 217. That such is not the situation is obvious from the fact that the two saving clauses—the general statute and that included in the Emergency Price Control Act of 1942—are by reason of their similarity in con-

struction and language, *in pari materia*. The district court based its construction of the saving clause of the Emergency Price Control Act on an interpretation of the word "sustaining" there employed as applying only in respect of actions pending at the time of the expiration of the Act; the court stated that to "sustain" an action means to support or carry on an action already in existence. However, that construction ignores the facts that the general saving statute, which, as stated, is *in pari materia*, itself uses the word "sustaining," and that the Supreme Court has consistently applied the general provision to permit prosecutions commenced after the repeal or expiration of a statute, so long as the right of action existed prior to that time. See *United States* v. *Reisenger*, 128 U. S. 398; *Great Northern Railway Co.* v. *United States*, 208 U. S. 452; *Hertz* v. *Woodman*, *supra*. See also *United States* v. *Standard Oil Company*, 148 Fed. 719, 726 (N. D. Ill.); *United States* v. *C. S. and P. M. Northern Railway Co.*, 151 Fed. 84 (D. Minn.), affirmed, 162 Fed. 835 (C. C. A. 8), certiorari denied, 212 U. S. 579–580; *Lang* v. *United States*, 133 Fed. 201 (C. C. A. 7).

We submit therefore that under both the general saving statute and the special provision of the Emergency Price Control Act, the United States is given the right to maintain enforcement actions for violations of the Act committed dur-

ing its life, even though such proceedings might not be commenced until after its expiration. This issue is important because large numbers of similar situations are now pending in the courts or are under consideration for institution of legal action.

Appended hereto is a copy of the opinion rendered by the district court on December 20, 1946.

Respectfully submitted.

(S) GEORGE T. WASHINGTON,
Acting Solicitor General.

(S) GERALD A. GLEESON,
United States Attorney for the Eastern District of Pennsylvania.

In the District Court of the United States for the Eastern District of Pennsylvania

No. 13841.—June Sessions, 1946

UNITED STATES OF AMERICA

v.

LIONEL PALLETZ

SUR MOTION TO DISMISS

(Filed Dec. 23, 1946)

DECEMBER 20, 1946.

WELSH, J.

On August 29, 1946, the United States filed a criminal information containing ten counts wherein it charged that the defendant named therein wilfully demanded and received from five

enumerated persons a sum or sums as rent for and in connection with the use or occupancy of housing accommodations known and designated as 6236 North Broad Street, Philadelphia, Pennsylvania, in excess of the maximum legal rents therefor established under the provisions of the Rent Regulation for Housing No. 28, contrary to and in violation of the Emergency Price Control Act of 1942, as amended, Section 4 (a): Rent Regulation for Housing No. 28, Sections 2 (a), 4 (a), and 9 (a). The information alleges that the total overcharges amount to three hundred and forty-five dollars ($345.00).

The defendant filed a motion to dismiss the information on the ground that the Emergency Price Control Act of 1942 as amended and regulations issued pursuant thereto terminated on June 30, 1946, and since the United States failed to bring a prosecution prior to the expiration date of the Act, that is, June 30, 1946, it is now without authority to prosecute the present information which was filed August 29, 1946.

1. All the acts constituting the alleged violations of the Act occurred prior to June 30, 1946, the expiration date of the Act. It is conceded that at common law the repeal of a penal statute operates as a remission of all penalties for violations of it committed before its repeal, and a release from prosecution therefor after said repeal. *U. S.* v. *Reisinger,* 128 U. S. 398. The foregoing

principle is based on the presumption that the repeal was intended as a legislative pardon for the past acts. (*U. S.* v. *Johnson*, 53 Fed. Supp. 167.) The application of the rule has been confined to the repeal of statutes, but logic requires that its application be extended to include temporary statutes—statutes which continue in force for a limited time only by express provisions.

2. Of course, if there exists a saving clause in a statute expressly authorizing prosecutions, the prosecution is saved despite the common law rule that the repeal of a penal statute bars prosecution or further prosecution for violations of a statute before the repeal. It is the opinion of this Court, however, that no such clause exists with regard to the instant case and the prosecution must fall.

3. It is urged by the Government that the General saving statute, Rev. Stat., Sec. 13, which since the amendment of 1944, 1 U. S. C. A., Sec. 29 supp., has applied to temporary statutes in addition to repealed statutes, saves the present prosecution. This general saving statute provides: "The repeal of any statute shall not have the effect to release or extinguish any penalty, forfeiture, or liability incurred under such statutes, unless the repealing Act shall so expressly provide, and such statute shall be treated as still remaining in force for the purpose of sustaining any proper action or prosecution for the enforce-

ment of such penalty, forfeiture, or liability (R. S. Sec. 13). The expiration of a temporary statute shall not have the effect to release or extinguish any penalty, forfeiture, or liability incurred under such statute, unless the temporary statute shall so expressly provide, and such statute shall be treated as still remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of such penalty, forfeiture, or liability." As amended March 22, 1944, c. 123, 58 Stat. 118.

It appears to us that the effect of the language in the general saving statute "unless the temporary statute shall so expressly provide" is to remove from the operation of the statute temporary statutes which themselves contain express saving clauses. As the Emergency Price Control Act of 1942 as amended contains a specific saving clause, Sec. 1 (b), 50 U. S. C. A., Appendix, Sec. 901 (b) supp., such saving clause supersedes the provisions of the general saving statute and therefore a discussion as to whether or not such particular saving clause is applicable in the instant case follows.

4. Sec. 1 (b) of the Emergency Price Control Act as amended provides: "The provisions of this Act, and all regulations, orders, price schedules, and requirements thereunder, shall terminate on June 30, 1946, or upon the date of a proclamation by the President, or upon the date specified in a

concurrent resolution by the two Houses of the Congress, declaring that the further continuance of the authority granted by this Act is not necessary in the interest of the national defense and security, whichever date is the earlier; except that as to offenses committed, or rights or liabilities incurred, prior to such termination date, the provisions of this Act and such regulations, orders, price schedules, and requirements shall be treated as still remaining in force for the purpose of sustaining any proper suit, action, or prosecution with respect to any such right, liability, or offense." As amended June 30, 1945, c. 214, Sec. 1, 59 Stat. 306.

For the purposes of this argument the pertinent words are: "* * * except as to offenses committed * * * prior to such termination date, the provisions of the Act * * * shall be treated as still remaining in force for the purpose of sustaining any proper * * * prosecution, with respect to any such * * * offenses." The Government filed its information on August 29, 1946, or almost two months after the expiration of the Emergency Price Control Act. Notwithstanding, it contends that the present prosecution is saved because the word "sustaining" appearing in the saving clause is synonymous with the word "commencing", and therefore empowers the United States to bring prosecution after the expiration date of the Act for offenses committed

during the life of said Act. We are not disposed to accept this contention for the reason that a fair reading of the language of the saving clause precludes such a liberal construction. Furthermore, the saving clause constitutes an abrogation of the common law principle discussed supra and acceptance of a liberal construction advanced by the Government would do violence to the doctrine that statutes abridging or abrogating the common law must be strictly construed. To read into the saving clause the word "commencing" as contended by the Government so as to save future prosecutions as well as pending prosecutions for offenses committed during the effective period of the Act a clear expression of the will of Congress to that effect must be shown. No such clear expression is present in the instant case.

In interpreting the word "sustaining" we hold it to be synonymous with the word "maintaining" and to denote "support of 275 U. S. 56; *Garner* v. *Mengel Co.,* 50 Fed. Supp. 794.

Webster's Dictionary lends some authority to the conclusion that "sustaining" refers to the supporting or upholding of something already in existence. It recognizes eight definitions of the word "sustain" (see 7 and 8) and gives as its basic definition "to maintain or give support, to cause to continue in existence".

It was held in *George* v. *Connecticut Fire Ins. Co.,* 201 Pac. 510, 23 A. L. R. 80, that "the word sustain" may be susceptible of several construc-

tions and has been defined as to mean to carry on or to maintain, which is the general meaning of the term.

5. It will be observed in passing that a saving clause, like other statutory provisions in regard to criminal offenses, is construed strictly in favor of defendant. Since the saving clause of the Emergency Price Control Act is susceptible of several constructions, the strict construction which is most favorable to the defendant should be adopted.

6. We conclude that 1 (b) of the Emergency Price Control Act of 1942 as amended saves only prosecutions which had already been commenced during the effective period of the Act and has no reference to prosecutions commenced subsequent to the termination date of the Act. Accordingly, the prosecution in the instant case must fall since it was commenced subsequent to the termination date of the Emergency Price Control Act of 1942 as amended—the criminal information having been filed and the summons issued on the same day, August 29, 1946, and the Act having expired on June 30, 1946. The question whether or not the present prosecution would have been saved if it were shown that some other proceedings, such as Hearing before the Commissioner, in connection with the present prosecution had been held prior to the termination date of the Emergency Price Control Act is not here determined. The

determination of that question depends to a large extent upon whether or not a Hearing before the Commissioner constitutes a prosecution commenced or in progress. On the record it appears that a Hearing before the Commissioner was not had in the case at bar and the question need not be determined.

7. The final contention of the Government is that Sec. 18 of the Price Control Extension Act of 1946 (Public Law 548, 79th Congress, Chapter 671, 2d Session), which provides in part that "all regulations, orders, price schedules and requirements under the Emergency Price Control Act of 1942, as amended * * * and the Stabilization Act of 1942 as amended which were in effect on June 30, 1946, shall be in effect in the same manner and to the same extent as if this Act had been enacted on June 30, 1946 * * *" operates to save the present prosecution. The late decisions of the Supreme Court define an ex post facto law as one which, in its operation, makes that criminal which was not so at the time the action was performed, or which increases the punishment, or, in short, which, in relation to the offense or its consequences, alters the situation of the party to his disadvantage. It has already been decided in the foregoing discussion that as of the termination date of the Emergency Price Control Act as amended the defendant was no longer subject to criminal prosecution. If the

effect of Sec. 18 of the Price Control Extension Act of 1946 would be to permit now a prosecution to be brought against said defendant it would operate to substantially alter the situation to the disadvantage of the defendant, contrary to the provisions of the Constitution prohibiting ex post facto laws.

For the reasons found in the foregoing opinion the motion to dismiss the information is granted.

An Order to that effect may be entered accordingly.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1946

No. 1100

UNITED STATES OF AMERICA, Appellant

v.

LIONEL PALLETZ

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

PETITION FOR RECONSIDERATION OF THE COURT'S ORDER OF APRIL 7, 1947, REVERSING THE JUDGMENT OF THE DISTRICT COURT, AND FOR ALLOWANCE OF HEARING OF APPEAL.

EARL JAY GRATZ,
Counsel for Appellee,
1421 Chestnut Street,
Philadelphia 2, Pa.

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1946

No. 1100

UNITED STATES OF AMERICA, Appellant

v.

LIONEL PALLETZ

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

PETITION FOR RECONSIDERATION OF THE COURT'S ORDER OF APRIL 7, 1947, REVERSING THE JUDGMENT OF THE DISTRICT COURT, AND FOR ALLOWANCE OF HEARING OF APPEAL.

The appellee moves the Court to reconsider its per curiam order of April 7, 1947, reversing the judgment of the District Court, and moves this Court to grant appellee a hearing in the above captioned appeal and opportunity to appellee to submit brief and oral argument on appeal, for the following reasons:

1. The Court erred in reversing the judgment of the District Court solely upon a jurisdictional statement filed by appellant, without granting any hearing to appellee,

without the filing of statement of points to be relied upon and designation of record by appellant, without brief by appellant or appellee, and without an opportunity to appellee to submit oral argument.

2. On March 28, 1947, appellee's counsel received by mail from the Acting Solicitor General of the United States the Statement of points to be relied upon and designation of record, proposed to be filed by appellant in this appeal, to which acceptance of service and approval by appellee was sought. On April 4, 1947, appellee by his counsel notified the Acting Solicitor General of appellee's intention to file a motion to dismiss the appeal because the appeal was not filed within the time prescribed by statute. This notice was intended to afford appellant opportunity to amend appellant's proposed Statement to include the question that would be raised by motion to dismiss the appeal. Before the Acting Solicitor General had replied to appellee, and without any Statement of points to be relied upon and designation of record having been filed, this Court entered its order of April 7, 1947, to the substantial prejudice of appellee, in that appellee was not only prevented from having this Court consider motion to dismiss the appeal but was also denied hearing on the merits of the appeal.

3. Inasmuch as the judgment of the District Court was rendered in a criminal proceeding against appellee and the judgment dismissed the criminal information against appellee, the reversal of that judgment without hearing, to the great prejudice of appellee, constitutes a denial of due process.

EARL JAY GRATZ,
Counsel for Appellee.

I certify that the foregoing petition is presented in good faith and not for delay.

EARL JAY GRATZ,
Counsel for Appellee.

MAY 9 1947
CHARLES ELMORE CROPLEY
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UNITED STATES OF AMERICA, Appellant

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SUPPLEMENT TO PETITION FOR RECONSIDERATION OF THE COURT'S ORDER OF APRIL 7, 1947, REVERSING THE JUDGMENT OF THE DISTRICT COURT, AND FOR ALLOWANCE OF HEARING OF APPEAL.

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OCTOBER TERM, 1946

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UNITED STATES OF AMERICA, Appellant

v.

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SUPPLEMENT TO PETITION FOR RECONSIDERATION OF THE COURT'S ORDER OF APRIL 7, 1947, REVERSING THE JUDGMENT OF THE DISTRICT COURT, AND FOR ALLOWANCE OF HEARING OF APPEAL.

The appellee submits the following supplemental reasons in support of his motion that the court reconsider its per curiam order of April 7, 1947, reversing the judgment of the District Court, and his motion that this Court grant appellee a hearing in the above captioned appeal and opportunity to appellee to submit brief and oral argument on appeal:

1. The appeal of the United States was not filed within the time prescribed by statute and this fact is plain upon the record.

Statement as to Jurisdiction, filed by appellant, concedes that "The district court, *in an order entered December 27, 1946*, granted the motion to dismiss" (p. 4, italics

supplied). The record as designated on appeal contains a copy of this order, and a copy of appellant's Notice of Appeal which was *filed in the district court on January 27, 1947.*

The jurisdiction of this court on direct appeal of the judgment of the district court is conferred by the Act of March 3, 1911, 36 Stat. 1167, as amended by the Act of May 9, 1942, 56 Stat. 271, (18 U. S. C. A. § 682 Supp.) which provides that

> "The appeal in all such cases *shall be taken within thirty days after the decision or judgment has been rendered* . . . Rules of practice and procedure with respect to appeals authorized by this section shall be prescribed by the Supreme Court of the United States . . ." (Italics supplied)

The order of this court of December 30, 1944, reported in 323 U. S. 824, which is in full force and effect, reads as follows:

Criminal Appeals Rules
Order

> It is ordered that the following rule regulating criminal appeals by the United States be prescribed, pursuant to the Act of May 9, 1942, 56 Stat. 271:
>
> [illegible]s of criminal procedure after plea of guilty, or verdict or finding of guilt, promulgated from time to time pursuant to the Act of February 24, 1933, c. 119 (47 Stat. 904) as amended, shall be applicable to appeals by the United States under the Act of May 9, 1942, c. 295, sec. 1 (56 Stat. 271), 18 U. S. C. 682, *except that the time for taking such appeals shall be as prescribed by the said Act of May 9, 1942.*" (Italics supplied)

Rule 45 of the Rules of Criminal Procedure for the District Courts of the United States, effective March 21,

1946, providing rules for computation of time, is inapplicable for two reasons:

(a) Subdivision (a) of Rule 45, as appears from the Notes to the Rules, prepared by the Advisory Committee, supersedes the method of computing time prescribed by Rule 13 of the Criminal Appeals Rules, promulgated on May 7, 1934, 292 U. S. 661. The Criminal Appeals Rules were expressly held inapplicable to the time for taking appeals under the Act of May 9, 1942, by this court's order of December 30, 1944, quoted above.

(b) Even had the court not expressly recognized in its order that the time for taking such appeals should be as prescribed by the said Act of May 9, 1942, the power of the court to prescribe rules of practice and procedure does not include the power to enlarge or extend the period within which an appeal authorized by the Criminal Appeals Act may be taken. *U. S. v. Hark*, 320 U. S. 531 (1944).

Appellant's notice of appeal was filed after the expiration of the thirty days allowed by the statute for the taking of an appeal under the Criminal Appeals Act and therefore the appeal must be dismissed.

2. On the merits, the judgment of the district court should be sustained.

(a) The information charged violation of the Emergency Price Control Act of 1942, as amended, and Regulations of the Price Administrator issued pursuant thereto.

By its own limitation the Emergency Price Control Act of 1942, as amended, and all regulations thereunder, expired on June 30, 1946.

The Information was not filed until August 29, 1946, and consequently this prosecution was not commenced until after expiration of the Act and Regulations under which violations are charged.

The offenses charged in the information arise from transactions between appellee and each of five tenants of

an apartment house in Philadelphia of which appellee was lessor. The transactions are alleged to have occurred between July 1, 1944 and May 1, 1945, and involve the aggregate amount of $345.

Appellee, by motion to dismiss, raised the question whether a prosecution could be commenced after the expiration of the Emergency Price Control Act of 1942 as amended. In other words, did not the saving clause, section 1(b) of that Act (50 USCA App. sec. 901 Supp.) apply only to prosecutions commenced prior to the expiration date of said Act?

After full argument, and upon consideration of extensive briefs submitted by the parties, the district court dismissed the information and appellant appealed from the court's order dismissing the information.

(b) The prosecution was not saved unless sec. 1(b) of the Emergency Price Control Act of 1942 (50 USCA App. Sec. 901 Supp.) operated to save it.

The Act expired by its own provisions on June 30, 1946. The effect of expiration of a temporary criminal statute is the same as repeal of a criminal statute. See Revised Stat. 13, as amended. And it is clear that upon repeal of such an Act without a saving clause, there can be no post-repeal prosecution or punishment for its violation. Even where a proceeding is pending, it cannot be further prosecuted, even if there has been a plea of guilty, and if the statute is repealed after conviction, judgment must be arrested and if appeal from conviction is pending when the statute is repealed the judgment of conviction must be set aside and the indictment quashed. 1 Wharton Criminal Law (1936) §§ 42, 414. This rule has often been affirmed by this Court. *U. S. v. Reisinger*, 128 U. S. 398 (1888); *U. S. v. Hark*, 320 U. S. 531 (1944).

The general saving statute (R. S. § 13) which since the amendment of 1944 expressly applies to expired temporary statutes as well as repealed statutes (1 USCA § 29 Supp.) has no application to the Emergency Price Control

Act of 1942, as amended, since the former expressly provides that the expiration of a temporary statute shall not have the effect to release or extinguish such statute "unless the temporary statute shall so expressly provide."

Sec. 1(b) of the Emergency Price Control Act of 1942, as amended (50 USCA § 901 Supp.) contains specific provision as follows:

> "§ 901. Purposes; time limit; applicability
>
> "(b) The provisions of this Act, and all regulations, orders, price schedules, and requirements thereunder, shall terminate on June 30, 1946, or upon the date of a proclamation by the President, or upon the date specified in a concurrent resolution by the two Houses of the Congress, declaring that the further continuance of the authority granted by this Act is not necessary in the interest of the national defense and security, whichever date is the earlier; except that as to offenses committed, or rights or liabilities incurred, prior to such termination date, the provisions of this Act and such regulations, orders, price schedules, and requirements shall be treated as still remaining in force for the purpose of *sustaining* any proper suit, action, or prosecution with respect to any such right, liability, or offense. As amended June 30, 1945, c. 214, § 1, 59 Stat. 306." (Italics supplied)

The plain effect of the language of the general saving clause is to remove from the applicability of the Act any statutes which themselves contain a saving clause. Since the Emergency Price Control Act contains an express provision as to the effect of expiration, this express provision supersedes and supplants the general statute.

Hence the Emergency Price Control Act alone determines what effect its expiration has upon this prosecution. If Sec. 1(b) as amended does not save the prosecution then the common-law rule controls and the prosecution must fall.

Section 1(b) does not operate to save a prosecution not commenced prior to June 30, 1946. Pertinent words of the saving clause stripped of phrases not referring to criminal provisions of the statute read as follows:

> ". . . except as to offenses committed . . . prior to such termination date, the provisions of the Act . . . shall be treated as still remaining in force for the purpose of sustaining any proper . . . prosecution, with respect to any such . . . offense."

The question becomes one of interpretation of the crucial word "sustaining" in the phrase "sustaining any proper prosecution". Unless "sustaining" may properly be read as synonymous with "commencing" the Government's information must fall. In *George v. Connecticut Fire Insurance Company*, 201 Pac. 410 (Okla. 1921), the court construed the expression "no action (under a fire insurance policy) shall be sustainable" in the absence of specified conditions and, finding that the usual sense of sustain is to "carry on" or "maintain", refused to read it in the sense of "commenced".

In general, "sustain" and "maintain" carry the same meaning. Thus in *Carson Rand Co. v. Stern*, 31 S. W. 772 (Mo. 1895) it was held that the word "maintain" signifies literally to hold by the hand, hence in ordinary use "to uphold, to sustain, to keep up" while in pleading it is defined to mean to support what has already been brought into existence. The Court said:

> "There is a well-defined distinction between beginning and maintaining an action, viewed with reference to the facts of the controversy now before us [interpreting an act preventing foreign corporations from maintaining any suit or action before compliance with the statute]. We are bound to assume that the word 'maintain' was chosen to express the exact shade of meaning intended by the lawmakers. It does not, with its present context, seem to us to include also the word 'begin' ".

This language would apply with equal force to the word "sustain" which could have been substituted in the statute without altering its meaning.

In *Roullard v. Gray*, 175 Pac. 479 (Cal. App. 1918) it was held that to "maintain" an action is not the same as to commence it but implies that the action had already been commenced. See *Smallwood v. Gallardo*, 275 U. S. 56 (1927).

Webster's basic definition of sustain is "to maintain or give support, to cause to continue in existence". Words appearing in criminal statutes must be given their ordinary accepted meaning and where two opposing interpretations are possible the interpretation favorable to defendant must be taken. 1 Wharton Criminal Law Sec. 414.

In *U. S. v. Hark*, 320 U. S. 531 (1944) this court upheld a prosecution brought under the Emergency Price Control Act after revocation of the Maximum Price Regulation which the indictment alleged had been violated. The court pointed out that revocation of the regulation did not repeal the statute, citing *U. S. v. Curtiss-Wright Export Corp.*, 299 U. S. 304 (1936). In the latter case, Mr. Justice Sutherland after holding that revocation of a proclamation issued under authority of a joint resolution of Congress did not put an end to the law, stated

> "We should have had a different case if the joint resolution had expired by its own terms upon the issue of the second proclamation"

and cited with approval language of the New Hampshire court to the effect that when laws expire by their own limitation they cease to be law in relation to the past as well as the future and can no longer be enforced in any case.

(c) Congress in enacting Sec. 1(b) did not intend to save all future prosecutions but clearly intended to save pending prosecutions only. Under the common law prior to R. S. § 13 a prosecution under a criminal statute pending on the date of repeal of the statute would fall. To alter this sweeping effect of the common law rule Congress en-

acted R. S. § 13 to continue in force after repeal (or in the case of a temporary statute, after its expiration) any statute "for the purpose of sustaining any proper . . . prosecution" to enforce a penalty incurred under such statute. The plain effect of this section is that a prosecution pending on the date of repeal would be allowed to continue to final judgment and sentence. What is there in the language of the statute to even suggest, much less to establish with the certainty required of criminal statutes, that the general saving act was intended to go so much farther and encompass prosecutions not *commenced*, until after repeal of the criminal statute under which prosecution is sought to be brought? Had Congress intended to so greatly broaden existing law apt words could have readily been used for that purpose. See 21 N. Y. Consol. Laws. Sec. 93; 46 Purdon's Penna. Stat. Sec. 596.

When Sec. 1(b) was drafted the phrase "for the purpose of sustaining any proper . . . prosecutions" was borrowed from R. S. 13. These words should be interpreted no more broadly here and nothing appears to indicate an intention by Congress to broaden their import. Regardless of intent, the words appear in a criminal statute where they must be interpreted in accordance with the rule of strict construction applicable in criminal matters, with all doubts resolved in favor of the accused.

3. The petitioner is not the appellant, that is to say, this is not an instance where certiorari has been denied or where an appeal, after certiorari allowed, has been decided against *appellant* without hearing. On the contrary, this appeal was taken by the Government from a judgment in favor of the accused (petitioner-appellee) in a criminal proceeding and this court's order, reversing the judgment of the district court, sustains the appeal and is a decision against the accused without affording the accused a hearing or the right to contest the appeal.

EARL JAY GRATZ,
Counsel for Appellee.

No. 1100. UNITED STATES *v.* PALLETZ; and

No. 1101. UNITED STATES *v.* KROMER. Appeals from the District Court of the United States for the Eastern District of Pennsylvania. April 7, 1947. *Per Curiam:* The judgments are reversed. 56 Stat. 23, 24, § 1 (b) as amended, 50 U. S. C. App. (Supp. V, 1946) § 901 (b); R. S. § 13, as amended, 58 Stat. 118; *Great Northern R. Co.* v. *United States*, 208 U. S. 452; *United States* v. *Reisinger*, 128 U. S. 398. *Acting Solicitor General Washington* and *Gerald A. Gleeson* for the United States.